

Chapter 7 Trade Remedies

Section A: Global Safeguard Measures

Article 7.1: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, except that a Party taking such an action shall exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.
3. No Party shall apply, with respect to the same good, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Bilateral Safeguard Measures

Article 7.2: Definitions

For purposes of this Section:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such goods;

safeguard measure means a measure described in Article 7.3 (Imposition of a Safeguard Measure);

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

transition period means the period during which a Party may adopt and maintain safeguard measures, and that shall include, for each good, the customs duties elimination period set out in Annex 2.1 (Elimination of Customs Duties) to that good plus an additional period of 2 years counted from the end of such customs duties elimination period; with the exception of the goods in staging categories C and D, for which the transition period will be limited to the customs duties elimination period.

Article 7.3: Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - i. the most-favoured-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
 - ii. the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement⁷.

3. Neither Party may maintain a safeguard measure:

- (a) for a period exceeding 2 years; except that the period may be extended by up to 1 year if the competent authorities determine that the safeguard measure continues to be necessary to

⁷ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting;

- (b) beyond the expiration of the transition period, except with the consent of the other Party.

4. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in Annex 2.1 (Elimination of Customs Duties) as if the safeguard measure had never been applied.

Article 7.4: Investigation Procedures and Transparency Requirement

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent investigating authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating good of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent investigating authority of the importing Party shall follow the rules in Article 4.2(a) and (b) of the Safeguards Agreement; and to this end, Articles 4.2(a) and (b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 7.5: Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that the increased imports have caused, or are threatening to cause, serious injury to a domestic industry.

2. The duration of the provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Article 7.3 (Imposition of a Safeguard Measure) and 7.4 (Investigation Procedures and Transparency Requirement) shall be met. The provisional safeguard measure shall adopt any of the forms set out in Article 7.3 (Imposition of a Safeguard Measure) of this Section. The guarantees or the received funds arising from the imposition of a provisional safeguard measure shall be promptly released or refunded as it corresponds, when the investigation does not determine that increased imports have caused, or threaten to cause, serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a definitive safeguard measure.

Article 7.6: Notification and Consultations

1. A Party shall promptly notify the other Party, in writing, when:
 - (a) initiating an investigation under this Section;
 - (b) applying a provisional measure; and
 - (c) adopting the determination to apply or extend a safeguard measure.
2. On request of a Party whose good is subject to a safeguard investigation under this Chapter, the Party conducting that investigation shall enter into consultations with the other Party to review a notification under paragraph 1, or any public notice or report that the competent investigating authority has issued in connection with the investigation.
3. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in the place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

Article 7.7: Compensation and Suspension of Concessions

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide mutually-agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 30 days after the application of the safeguard measure.
2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.
3. The exporting Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

Section C: Antidumping, Subsidies and Countervailing Measures

Article 7.8: General Provision

Except as otherwise provided in this Section, the Parties retain their rights and obligations under Articles VI and XVI of GATT 1994, the *WTO Agreement on Implementation of Article VI of the GATT 1994*, the *WTO*

Agreement on Subsidies and Countervailing Measures, and the WTO Agreement on Agriculture.

Article 7.9: Agricultural Export Subsidies

Neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Article 7.10: Transparency and Legal Certainty

1. The Parties agree that investigations and impositions of antidumping and countervailing measures shall be based on a fair and transparent system.

2. The Parties agree to observe the following practices in antidumping and countervailing measures cases between them:

- (a) immediately following the receipt of a properly documented application from an industry in one Party for the initiation of an antidumping or countervailing measure investigation in respect of goods from the other Party, the Party that has received the properly documented application shall immediately notify the other Party of the receipt of the application;
- (b) when the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation, they shall notify it to the other Party and to other interested parties at least 7 working days in advance of the date of initiation of such investigation;
- (c) a Party's investigating authority shall take due account of any difficulties experienced by exporters of the other Party in supplying information requested and provide any assistance practicable. On request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking.

Article 7.11: Lesser Duty Rule

Should a Party decide to impose an antidumping duty, the amount of such duty shall not exceed the margin of dumping, but it shall be less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.12: Consideration of Public Interest

Antidumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Public interest shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organizations, to the extent they have provided relevant information to the investigating authorities.

Article 7.13: Prohibition of Zeroing⁸

When determining dumping margins, the Parties shall ensure that the practice of zeroing is not used in any of the stages included in an antidumping investigation, including the reviews listed in Articles 9 and 11 of the *WTO Agreement on Implementation of Article VI of the GATT 1994*.

⁸ The term “zeroing” shall be understood as the practice of converting to zero the negative dumping margins, obtained for one or several types of goods, when calculating the margin of dumping of the investigated good.